SUPREME COURT, U. S.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1291

KELLWOOD COMPANY, OTTENHEIMER DIVISION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD AND INTERNATIONAL LADIES' GARMENT WORKERS UNION, AFL-CIO,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Petitioner, Kellwood Company, Ottenheimer Division, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in this case on December 28, 1970.

OPINIONS BELOW.

The opinion of the Court of Appeals (Appendix B-1, pp. A3-A11) is not yet officially reported. The National Labor Relations Board's decision and order (Appendix C-1, pp. A17-A18) is reported at 178 NLRB No. 6.

JURISDICTION.

The judgment of the Court of Appeals for the Eighth Circuit (Appendix B-2, pp. A12-A15) was entered on December 23, 1970. A timely petition for rehearing en banc was denied on December 23, 1970 (Appendix B-3, p. A16) and this petition for certiorari was filed within ninety days of that date. A thirty day stay of the Court of Appeals' judgment has been granted to permit the filing of this petition. Appendix B-4, p. A16. This Court's jurisdiction is invoked under 28 U. S. C. Section 1254(1).

QUESTIONS PRESENTED.

1. Does the National Labor Relations Board have the power, in determining whether a party has bargained in good faith within the meaning of 29 U. S. C. Section 158(d), to promulgate standards with respect to bargaining techniques, attitudes and approaches?

2. May an overall refusal to bargain in good faith be found where (a) there has been a good faith acceptance of an offer for a final and binding agreement and (b) where the refusal to bargain is predicated substantially on various acts found to have "embarrassed" and "denigrated" the other party?

STATUTES INVOLVED.

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U. S. C. Sec. 151, *et seq.*), which are involved in this case are set forth in Appendix A. For the convenience of the Court, the pertinent provisions of Section 8(d) of the Act are set forth below:

> "For the purpose of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees

to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . . *but such obligation does not compel either party to agree to a proposal or require the making of a concession.* . . ." (emphasis added).

STATEMENT OF THE CASE.

This is *not* a case where there has been a failure to negotiate in *fact* for a collective bargaining agreement. The issue is instead the far more perplexing one of whether, despite exhaustive and complex negotiations and, at one point, even an assumed final agreement, the National Labor Relations Board may nevertheless evaluate a party's bargaining tactics and conclude that there has been an overall absence of good faith bargaining.

The factual situation involved is not atypical in the current American industrial scene: the lengthy and difficult, frequently abrasive, negotiation for an initial collective bargaining agreement. The bargaining unit consists of approximately 1200 production and maintenance employees, represented by Respondent International Ladies' Garment Workers Union (herein called the "Union"), at Petitioner's (herein called the "Company") Little Rock, Arkansas, facilities. The negotiations occurred during a period of some twenty months, including a thirteen month strike, and consisted of some thirty separate bargaining meetings, both formal and informal. The crux of the case, however, are those events which occurred during the pre-strike bargaining period of March to October, 1962.[1]

Initially, in a series of meetings from March through June, agreement was reached on a multitude of non-eco-

1. The other pre-strike unfair labor practices enforced by the court below are collateral to and derivative from the finding of overall bad faith bargaining. Thus, the previously-approved settlement agreement with respect to pre-election campaign unfair labor practices was set aside because "the Company violated this agreement by bargaining in bad faith" (Appendix C-2, p. A91);

nomic items. By July 19, there was general agreement on the framework of a collective bargaining contract, the parties had exchanged and discussed proposals on all bargaining issues, and there remained but seventeen issues unresolved. At the next meeting, held in St. Louis on September 22 between the President of the International Union and the Chairman of the Board of the Company, through a process of admitted "give and take by both parties," the number of issues in dispute was reduced from seventeen to three: wages, an escalator or cost-of-living clause, and whether piece rates would be subject to arbitration. The Union had also injected an additional issue by reinstating its demand for a picket line clause. These items were in turn to be resolved at a second summit meeting to be held in New York on September 29. Appendix C-2, pp. A44-A49, A57-A62.

The September 29 meeting did result in what, at least to the Company, was a final and binding agreement. The Company proposed that it would agree to the Union's wage proposal if the Union would withdraw the other three controverted items. The Union responded, after discussion, that it would withdraw its non-wage demands in return for a two-year contract rather than the three-year agreement which had been under discussion. The Company then caucused and, upon its completion, replied to the Union President, "You have a contract, Mr. Stulberg." It soon became apparent, however, that there was a misunderstand-

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the strike was found to be an unfair labor practice, rather than economically motivated, strike because it flowed from the Company's "general lack of good-faith bargaining" (Appendix C-2, pp. A94-A95); and the Company's implementation of a wage increase on October 25 was condemned because it was also, in the language of the court below, part of the Company's single-minded "strategy to force a 'collision course' and obstruct bargaining." Appendix B-1, p. A11. Accordingly, the "basic issue", as the Eighth Circuit concluded, "surrounds the §8(a)(5) violation as it relates to the company's good faith in bargaining." Appendix B-1, p. A6.

ing as to the timing of the wage proposal, that it was not that which the Company had understood, and that there still was no final and complete agreement. Appendix C-2, pp. A63-A66.

Notwithstanding the aborted agreement of September 29, it was recognized that, through the numerous concessions and adjustments that had been made by both parties, the negotiations had reached the point where only an understanding on wages precluded a complete agreement. On October 6, the Company sought to resolve this difference by increasing its wage proposal and making a final offer at the midpoint of the parties' conflicting interpretations of the Union's wage proposal. This new proposal narrowed the difference separating the parties to only five cents per hour for each of two six-month periods in a three year agreement.[2] Appendix C-2, pp. A67-A69.

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2. In chart form, the wage proposals of the parties are set forth below. For convenience, wages are stated in terms of minimum guarantees, rather than the employees' base rate which would have been 27½¢ higher:

	Proposals	Date	Effective Date of Contract	3-1-67	6-1-67	2-1-68	6-16-68
1.	Union	4-13-66	1.50	1.50	no proposal	no proposal	no proposal
2.	Company	6-22-66	1.30	1.60	1.45	1.60	1.65
3.	Company	7-19-66	1.35	1.60	1.45	1.60	1.65
4.	Union	8-16-66	1.45	1.65	1.55	1.60	1.70
5.	Union	8-29-66	1.60	1.60	1.50	1.60	1.70
6.	Union (as understood)	9-22-66	1.35	1.60	1.50	1.60	1.70
7.	Company (acceptance of "proposal")	9-29-66	1.35	1.60	1.50	1.60	1.70
8.	Union (as "explained")	9-29-66	1.35	1.50	1.50	1.70	1.70
9.	Company's final proposal	10- 6-66	1.35	1.45	1.50	1.65	1.70
10.	Union	no proposal prior to strike					

On October 10, the Union refused this offer and also declined to make a counter-proposal. When pressed for the basis of its refusal, the Union would not discuss it and stated only that the parties must return to the bargaining table. Appendix C-2, pp. A69-A70.

The final pre-strike meeting occurred on October 24. The Company sought to present its final offer of October 6 to the employee negotiating committee which had not been present at the four previous meetings. The Union's vice president replied that such a presentation would be futile, that the offer had already been flatly refused, and that the employees had voted to strike. When asked what separated the parties, his only response was "the people and a decent offer from the Company." The Company representatives left the meeting with a statement by its negotiator: "I only hope the 1600 people know what separates us: a nickel for two six-month periods." Appendix C-2, pp. A76-A78.

The strike commenced the following day and continued until November 22, 1967. Only two subsequent negotiation meetings occurred thereafter—both at the insistence of government mediators and both proved to be unsuccessful. On December 5, 1967, some five months after all strikers had been replaced, the Company withdrew its recognition of the Union on the ground, inter alia, that it no longer represented a majority of the employees in the bargaining unit. Appendix C-2, pp. A112-112, A119.

The decision below concluded that, notwithstanding this lengthy and difficult series of first negotiations, which at one point had even resulted in a [illegible] executed final agreement, the Company had engaged in an overall pattern of bad faith bargaining. This conclusion was predicated primarily on the presumption that the Company's bargaining tactics and strategy had "embarrass[ed]" and "undetermine[d]" the Union in the eyes of the employees. It is

upon this issue—whether the Board may intrude to such a substantial degree in the collective bargaining process—that certiorari is now sought.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Raises an Important Question of Federal Law Which Has Not Been, But Should Be, Settled by This Court.

The resolution of industrial disputes through free collective bargaining, absent governmental regulation of its terms, is the cornerstone upon which our national labor policy rests. *H. K. Porter Company v. N. L. R. B.*, 397 U. S. 99, 25 L. Ed. 2d 146, 151 (1970). Yet the myriad problems attendant upon such resolution continue to grow in both frequency and complexity.[3] Contractual negotiations in the public as well as the private sector[4]—and the industrial

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3. In fiscal year 1969, 2372 employer refusal to bargain charges were filed with the Board—21.6% of all charges filed against employers. Thirty-Fourth Annual Report of the National Labor Relations Board, p. 199. By comparison, in fiscal year 1936 the total of all charges filed with the Board was 2014. Fourth Annual Report of the National Labor Relations Board, p. 30. The complexity of such charges, and the resultant need for this Court to establish the controlling guidelines, was recently well stated by the Fifth Circuit: "... in few other instances is the task of judging as difficult as in the refusal to bargain case, where the factors are subtle and elusive, and conduct which at one time may be manifest good faith may, under other circumstances, be mere pretense." *H. R. & R. Trucking Co. v. N. L. R. B.*, ... F. 2d ..., 75 LRRM 2705, 2705-6 (Nov. 26, 1970); Appendix D-1, p. A125.

4. There are approximately 150,000 collective bargaining agreements presently in force. Directory of National and International Labor Unions in the United States, 1969, Bulletin 165 (Bureau of Labor Statistics, 1969). And this figure does not fully reflect the burgeoning growth of collective bargaining in the sensitive area of public employees. See, e.g., Assembly, Labor Problems in the 70's, 1970 Report of the American Bar Association's Section of Labor Relations Law, 74 LRRM 201, 202 (1970). Each of these contracts, of course, is periodically subject to replacement, renewal

strife engendered thereby[5]—remain matters of paramount concern throughout the nation.

One significant contributant to the problem is the undefined role of the National Labor Relations Board in adjudicating bargaining techniques and bargaining conduct. For example, where, as in this case, exhaustive negotiations virtually achieve agreement but fail to result in complete accord, as Chief Justice (then Judge) Burger has observed,[6] the test of legality must be "whether, in light of all the circumstances of the negotiation, there is evidence of a calculated effort to frustrate agreement *generally*" (emphasis Chief Justice Burger's). But does such an inquiry permit the Board, as it did here, to look over the negotiator's shoulders and virtually take a seat at the bargaining table? May the Board find, as here, a desire to frustrate agreement when there actually has been a *bona fide* acceptance of the other party's offer? May an effort to frustrate agreement be implied, as in this case, from pre-election statements made a considerable period earlier, or from the Company's general attitude toward unions, or, indeed, from a bargaining stance which may embarrass or denigrate the other party? These questions, all of critical importance in the administration of the National Labor Relations Act, remain in controversy and unresolved by this Court.

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or modification. In fiscal year 1970, for example, the Federal Mediation and Conciliation Service received 101,474 dispute notices under Section 8(d)(3) of the Act. Twenty-Third Annual Report of the Federal Mediation and Conciliation Service.

5. In 1969, there were a record 5,700 recorded work stoppages involving nearly 2.5 million workers. Work Stoppages in 1969, U. S. Department of Labor, Summary Report, June, 1970. In 1970, there were 5,600 work stoppages involving 3.3 million workers. Press Release, USDL 71-004 (Bureau of Labor Statistics, January 11, 1971).

6. *United Steelworkers of America* v. *N. L. R. B. (Roanoke Iron & Bridge Works, Inc.)*, 390 F. 2d 847, 853 (D. C. Cir. 1967), *cert. den.*, 391 U. S. 804 (1968) (dissenting opinion).

The instant case provides an appropriate vehicle to resolve such controversy. It places in more precise focus, through a stronger factual context, the problems which divided the courts in *Roanoke Iron* and *N. L. R. B.* v. *General Electric Co.*, 418 F. 2d 736 (2nd Cir. 1969), *cert. den.*, 397 U. S. 965 (1970)—the only previous decisions in the history of the National Labor Relations Act which approved a finding of overall bad faith despite a manifested desire to reach agreement. It permits the Court to examine the Board's position, now approved by the Eighth Circuit, that an employer engages in bad faith bargaining when he deprecates the union with which he is negotiating —a position which, as Judge Friendly observed in his dissent in *General Electric*, finds no warrant "in the language of the statute, its legislative history or decisions construing it." 418 F. 2d at 770. In sum, it permits this Court to establish guidelines as to the Board's responsibilities in an area of vital concern to management, labor and the public alike.

2. The Decision Below Is in Conflict With the Decisions of This Court.

This Court has repeatedly emphasized the rigorous limitations imposed upon the Board in evaluating collective bargaining. In last year's *Porter* decision the Court admonished once again that the Board may not "impose its own views of a desirable settlement" or "directly or indirectly . . . sit in judgment upon the substantive terms of collective bargaining agreements" or "compel agreement when the parties themselves are unable to do so." 25 L. Ed. 2d at 151, 152, 153. The dissenting opinion of Mr. Justices Douglas and Stewart similarly observed that "once there is any business consideration that leads to a denial of a demand or any consideration of bargaining

strategy that explains the refusal, the Board has no power to act. Its power is narrowly restricted to the clear case where the refusal is aimed solely at avoidance of any agreement." 25 L. Ed. 2d at 155.[7]

The Eighth Circuit sanctions here a finding of bad faith, based solely on the failure to manifest "sincerity to work for an agreement," while concomitantly it finds a "good faith" acceptance of the other party's proposal. Appendix B-1, p. A6. But if actual acceptance of the other party's proposal is not the key to good faith, then what is? The answer of the court below is apparent from its decision: if bargaining tactics and attitudes make one party appear "ineffective," or "embarrass" or "denigrate" that party, then there has been bad faith bargaining. Appendix B-1, pp. A7-A9.

Such a proposition is, indeed, as Mr. Chief Justice (then Judge) Burger observed in his dissent in *Roanoke*, "novel and internally inconsistent." 390 F. 2d at 853. And the court's countenancing of the arrogation on the part of the Board of the role of regulator of bargaining strategy necessarily condones the Board's entrance into the substantive aspects of the bargaining process. See *Insurance Agents International Union*, 361 U. S. at 489-90. The Board's role is only to "oversee and referee the process of collective bargaining, leaving the results of the contest to the bargaining strengths of the parties." *Porter*, 25 L. Ed. 2d at 153. "For the government to tell the parties how they must conduct themselves in collective bargaining negotiations," as Professor Cox has observed, "would seem to lead inevitably to weighting the scales in favor of one side or the other, for tactical maneuvers in-

7. See also *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45 (1937); *N. L. R. B.* v. *American National Ins. Co.*, 343 U. S. 395, 404 (1952); and *N. L. R. B.* v. *Insurance Agents International Union*, 361 U. S. 477 (1960).

finance the process of persuasion especially where economic power is a primary factor."[8]

Board regulation of bargaining techniques and attitudes does not permit the bargaining strengths of the parties, as often reflected in the tough and even unreasonable posture of their negotiators, to determine "the results of the contest." "If it is necessary," to quote *Porter*, "to allow governmental review of proposals for collective bargaining agreements," then this surely "is the job of Congress, not the Board or the courts." 25 L. Ed. 2d at 154.

3. The Decision Below Is in Conflict With the Decisions of Other Courts of Appeal on the Same Question.

The necessity for this Court to delineate the Board's role in assessing overall good faith where bargaining has, in fact, occurred is emphasized by the considerable conflict between the instant case and two other significant Court of Appeals decisions issued at approximately the same time: *M. R. & R. Trucking Co.* v. *N. L. R. B.*, ____ F. 2d ____, 75 LRRM 2705 (5th Cir. Nov. 24, 1970), Appendix D-1 (A134-A148); and *United Steelworkers of America* v. *N. L. R. B. (Florida Machine & Foundry Co.)*, ____ F. 2d ____, 75 LRRM 2790 (D. C. Cir. Dec. 4, 1970), Appendix D-2 (A148-A163). The continued existence of such different rules on this important issue in labor management relations impairs the uniformity of national labor policy that the Act was designed to achieve. Cf. *Garner* v. *Teamsters Union*, 346 U. S. 485, 490-491 (1953).

Several examples will illustrate the confusion, and conflicting concept of the Board's role, which presently abounds:

A. In *Florida Machine*, the court observed that, since

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8. Cox, *The Duty to Bargain in Good Faith*, 71 Harv. L. Rev. 1401, 1440 (1958).

"the Employer from the beginning had not wanted a union and had done its best to persuade the employees to vote against union representation," it was obvious that "a residue of this antipathy remained." 75 LRRM at 2702; Appendix D-2, p. A151. Similarly, in *M. R. & R.* the court recognized that the bargaining there was necessarily influenced by the recertification election which had occurred during the midst of negotiation and that, as a result, the case was "one of hard-nosed bargaining from both sides of the table, and use by both company and union of naked power." 75 LRRM at 2706; Appendix D-1, p. A136. Yet neither court attributed any overriding significance to so common a prelude to negotiations.

By contrast, here the Company's general opposition to unionization, its statements during a pre-election campaign two years prior, and even its conduct at another plant where the employees were not represented by the Union,[9] are all invoked as the "touchstone" to demonstrate the "impossib[ility]" that the Company could subsequently bargain with a "sincere desire to reach an agreement." Appendix B-1, pp. A7-A9; Appendix C-2, pp. A82-A84.

B. The Board in *M. R. & R.*, as here, minutely analyzed the timing and content of the employer's bargaining proposals and found them in part to be "so unpalatable to the union that the offer was an illusory one" and one "to which no self respecting union could agree." 75 LRRM 2707, 2708; Appendix D-1; pp. A139, A142, n. 7. The Fifth Circuit, however, *rejected* this approach, noting, first, that

9. The Company's Loraine plant is admittedly "not involved in this litigation" (Appendix B-2, p. A4) and the Company-wide wage increase granted the employees at that plant, although a point stressed by both the Board and the court below (Appendix B-1, pp. A7-A8; Appendix C-2, pp. A49-A55, A84), is one which has already been held *not* to be a violation of the Act by two Courts of Appeal. *Kellwood Co., Ottenheimer Bros. Mfg. Co.* v. *N. L. R. B.*, 411 F. 2d 493 (8th Cir. 1969); *Southern Foundation* v. *N. L. R. B.*, 406 F. 2d 1063 (6th Cir. 1968).

the union there had considered the various proposals and made counter-proposals, and, second, that even assuming *arguendo* "a party's proposal may be so extreme or bizarre as to give rise to an inference of bad faith . . . such a principle, if accepted at all, must be narrowly restricted, otherwise it imperminissibly undermines the policy of Section 8(d) of the Act." 75 LRRM at 2708, n. 7; Appendix D-1, p. A142, n. 7. The District of Columbia Circuit in *Florida Machine* similarly criticized the Board for finding that an employer's proposal "was one which the Union could not possibly justify to the employees and hence frustrated rather than furthered collective bargaining." 75 LRRM at 2794; Appendix D-2, p. A155.

By contrast, here the Company's bargaining tactics are specifically condemned because they "undermine[d] the Union in its effort to get an *acceptable* contract for the employees without a strike," (Appendix C-2, p. A86; emphasis added) or, because, in the language of the Eighth Circuit, they made it appear the Union was "ineffective" and "embarrass[ed]" and "denigrate[d] the union in the eyes of its members." Appendix B-1, pp. A7, A8. Indeed, neither Board nor court disavow the Trial Examiner's reliance on the Company's *proposal* with respect to limiting the Union's right to strike (Appendix C-2, pp. A88-A90)—a clear indication, as the court recognized with respect to a similar proposal in *Florida Machine*, that the finding of bad faith was influenced by "the fact that the Board did not approve of certain of the proposals advanced by the Employer during the course of negotiations." 75 LRRM at 2793; Appendix D-2, p. A154.

C. "Both labor and management," as the court emphasized in *Florida Machine*, "have a great deal at stake when sitting down at the bargaining table . . ." 75 LRRM at 2792; Appendix D-2, p. A152. "It is not for the Board to balance the scales or equalize or neutralize pressures in

the name of good faith. Collective bargaining is, by its very nature, 'an annealing process hammered out under the most severe and competing forces and counteracting pressures.'" *M. R. & R.*, 75 LRRM at 2710; Appendix D-1, p. A166.

By contrast, here the Eighth Circuit approves a far different approach to collective bargaining. Notwithstanding the "great deal" at stake to the Company and the numerous "competing forces and counteracting pressures" that were at work in the instant negotiations, the Company's admittedly non-coercive communication to its employees on October 18, designed to apprise them of its prior final offer and to urge them to advocate its acceptance at a Union meeting, is censored because it was made without consultation with the Union, because it did not cover every aspect of the Company's total proposal and because "it was for the Union to decide when to tell the employees about [that Company's] offer." Appendix B-1, pp. A8, A10; Appendix C-2, pp. A72-73.[10]

D. In *M. R. & R.*, the principal Board errors found by the court were (1) restricting "the right of the company to use the stronger bargaining position in which it found itself" and (2) treating the "actions of the company as though existent in isolation." 75 LRRM at 2709; Appendix D-1, pp. A144-A145. Similarly, the deficiency of the Board's decision found by the court in *Florida Machine* was

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10. *Cf., e.g.*, the assertion of the majority opinion in *General Electric* that a "company, of course, can advertise its belief that its offer is fair, and that at the particular time, it sees no reason to change its offer even to forestall a strike." 218 F. 2d at 762. *See also Thomas v. Collins*, 323 U. S. 516, 532, 537-8 (1945); *Linn v. Plant Guard Workers*, 383 U. S. 53, 62 (1966) ("... debate on issues dividing labor and management should be uninhibited, robust, and wide-open, and ... may well include vehement, caustic, and sometimes unpleasantly sharp attacks"); and Section 8(c) of the Act which draws no distinction between pre-election and post-election communications.

its assumption that the employer's wage proposal was not "meaningful" and the resultant imposition of an obligation on the company to produce evidence to prove to the contrary. 75 LRRM at 2795; Appendix D-2, pp. A159-A161.

By contrast, here the court finds the Company to have engaged in "shadow bargaining" because it offered minimum guarantees "no more than the anticipated federal minimum wage increases". Appendix B-2, p. A9. The court enforces a Board decision which ignores numerous indicia of the Company's good faith—(a) its repeated "give and take"; (b) its frequent proffer of counter-proposals; (c) its agreement with the Union on all non-economic matters; (d) its concessions on such costly economic items as a new pension plan, improvements in hospital and surgical insurance, accident and sickness benefits, life insurance and a new holiday;[11] and (e) its narrowing of the disputed items so that, ultimately, only five cents in wages really separated the parties. And finally, the court sanctions the Board's crucial and mistaken premise that "(b)argaining in good faith requires bargaining on *every* issue, especially with a *newly certified* union on a *first* wage increase." Appendix C-2, p. A84 (emphasis the Board's). In effect, since there was no other area of dispute, the Eighth Circuit has required the Company to *agree* to the Union's wage proposal.

The utilization by the Board, with court approval here, of each of the foregoing factors necessarily has a serious and widespread unsettling effect on both management and labor. It demonstrates that the Board has adopted, now with the approval of the Eighth Circuit, a novel and dangerous approach to collective bargaining. This new

11. *Cf., e.g.*, the majority opinion in *General Electric* which declared that while "the absence of concessions would not prove bad faith, their presence would . . . raise a strong inference of good faith." 418 F. 2d at 758.

approach is also evident in the Board's decisions in *M. R. & R.* and *Florida Machine*. Surely the fears expressed by Professor Archibald Cox thirteen years ago—that "the NLRB may come to condemn any conduct which sharply departs from good bargaining practice"—have been rekindled.[12]

The compelling necessity to allay these legitimate concerns argues forcefully for review of the present case by this Court.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

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12. Cox, *supra* n. 8, at 1403.